

117TH CONGRESS  
1ST SESSION

# S. 2369

To provide access to reliable, clean, and drinkable water on Tribal lands,  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 15, 2021

Mr. BENNET (for himself and Mr. HEINRICH) introduced the following bill;  
which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To provide access to reliable, clean, and drinkable water  
on Tribal lands, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Tribal Access to Clean  
5 Water Act of 2021”.

**6 SEC. 2. FINDINGS.**

7       Congress finds that—

8           (1) access to reliable, clean, and drinkable  
9       water is an essential human need and critical to the  
10      public health, well-being, educational attainment,

1 and economic development of all communities in the  
2 United States;

3 (2) many countries, along with the United Na-  
4 tions, have recognized the urgency of the need to ac-  
5 cess reliable, clean, and drinkable water by passing  
6 laws or resolutions relating to the human right to  
7 water and sanitation, including—

8 (A) recognizing these water and sanitation  
9 needs exist among Indigenous peoples; and

10 (B) establishing aggressive targets for  
11 achieving universal access to those basic serv-  
12 ices;

13 (3) in the United States, access to reliable,  
14 clean, and drinkable water has long been a signifi-  
15 cant problem in many Native communities, such that  
16 nearly half of all households in those communities do  
17 not have access to reliable water sources, clean  
18 drinking water, or basic sanitation, and are signifi-  
19 cantly more likely than White households to lack in-  
20 door plumbing;

21 (4) the trust responsibility of the Federal Gov-  
22 ernment to Indian Tribes requires the Federal Gov-  
23 ernment to ensure the survival and welfare of Indian  
24 Tribes, and the failure to provide basic water service  
25 cannot be reconciled with that trust responsibility;

1                         (5) the ongoing COVID–19 pandemic has had  
2                         a disproportionate impact on Native communities  
3                         due to a multitude of factors, including—

4                             (A) persistent economic disadvantages;  
5                             (B) racial inequity; and  
6                             (C) lack of public health infrastructure, in-  
7                         cluding access to running water;

8                         (6) on January 27, 2021, President Biden  
9                         issued Executive Order 14008 (86 Fed. Reg. 7619  
10                         (February 1, 2021)), which provides that it is the  
11                         policy of the Biden Administration to secure envi-  
12                         ronmental justice and spur economic opportunity for  
13                         disadvantaged communities that have been histori-  
14                         cally marginalized and overburdened by pollution  
15                         and underinvestment in housing, transportation,  
16                         water and wastewater infrastructure, and health  
17                         care;

18                         (7) advances in water technology, including  
19                         treatment, sensors, and innovative pipeline mate-  
20                         rials, can assist in—

21                             (A) accelerating efforts to provide uni-  
22                         versal access to reliable, clean, and drinkable  
23                         water for all Native communities; and  
24                             (B) enhancing resilience in the face of cli-  
25                         mate change;

1                             (8) the COVID–19 pandemic has been a stark  
2 reminder that access to reliable, clean, and drinkable  
3 water to support basic hygiene is a matter of life or  
4 death for all individuals in the United States;

5                             (9) it is in the interest of the United States,  
6 and it is the policy of the United States, that all ex-  
7 isting Native communities be provided with safe and  
8 adequate water supply systems as soon as prac-  
9 ticable; and

10                          (10) both appropriate funding at the level of  
11 unmet need and a “whole of government” approach  
12 among all Federal agencies are essential to provide  
13 a meaningful solution to the lack of access to clean  
14 water on Tribal lands.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17                          (1) DIRECTOR.—The term “Director” means  
18 the Director of the Indian Health Service.

19                          (2) INDIAN TRIBE.—The term “Indian Tribe”  
20 has the meaning given the term in section 4 of the  
21 Indian Self-Determination and Education Assistance  
22 Act (25 U.S.C. 5304).

23                          (3) NATIVE COMMUNITY.—The term “Native  
24 community” means—

25                             (A) an Indian Tribe; and

(B) a Native Hawaiian (as defined in section 801 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4221)) community.

10                   (5) TRIBAL LAND.—The term “Tribal land”  
11                  means—

(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

(i) in trust by the United States for the benefit of an Indian Tribe or an individual Indian;

24 (ii) by an Indian Tribe or an individual Indian, subject to restriction against  
25

1                   alienation under laws of the United States;

2                   or

3                         (iii) by a dependent Indian commu-  
4                         nity;

5                         (C) any land located within a region estab-  
6                         lished pursuant to section 7(a) of the Alaska  
7                         Native Claims Settlement Act (43 U.S.C.  
8                         1606(a));

9                         (D) Hawaiian Home Lands (as defined in  
10                         section 801 of the Native American Housing  
11                         Assistance and Self-Determination Act of 1996  
12                         (25 U.S.C. 4221)); and

13                         (E) those areas or communities designated  
14                         by the Assistant Secretary of Indian Affairs of  
15                         the Department of the Interior that are near,  
16                         adjacent, or contiguous to reservations where fi-  
17                         nancial assistance and social service programs  
18                         are provided to Indians because of their status  
19                         as Indians.

20 **SEC. 4. INDIAN HEALTH SERVICE.**

21                         (a) SANITATION FACILITIES CONSTRUCTION PRO-  
22                         GRAM FUNDING.—

23                         (1) APPROPRIATION.—In addition to amounts  
24                         otherwise available, there is appropriated to the Sec-  
25                         retary of Health and Human Services, acting

1 through the Director (referred to in this section as  
2 the “Secretary”), out of amounts in the Treasury  
3 not otherwise appropriated, \$3,410,000,000 for the  
4 fiscal year ending September 30, 2021, to remain  
5 available until expended, for all activities authorized  
6 under section 302(b)(1) of the Indian Health Care  
7 Improvement Act (25 U.S.C. 1632(b)(1)), including  
8 the planning, design, construction, modernization,  
9 improvement, and renovation of water, sewer, and  
10 solid waste sanitation facilities: *Provided, That* the  
11 Secretary may retain up to 10 percent of the  
12 amounts appropriated under this paragraph for ad-  
13 ministration of the Sanitation Facilities Construc-  
14 tion Program and related management and staffing  
15 purposes.

16 (2) PRIORITY FOR FUNDING.—In awarding  
17 funding for the planning, design, construction, mod-  
18 ernization, improvement, and renovation of water,  
19 sewer, and solid waste sanitation facilities under  
20 paragraph (1), the Secretary shall prioritize sanita-  
21 tion facilities with the highest deficiency level, as es-  
22 tablished in the Report.

23 (b) TECHNICAL ASSISTANCE FUNDING.—In addition  
24 to amounts otherwise available, there is appropriated to  
25 the Secretary, out of amounts in the Treasury not other-

1 wise appropriated, \$150,000,000 for the fiscal year ending  
2 September 30, 2021, to remain available until expended,  
3 for technical assistance support in Native communities  
4 and for other activities authorized under section 302(b)(2)  
5 of the Indian Health Care Improvement Act (25 U.S.C.  
6 1632(b)(2)).

7 (c) OPERATION AND MAINTENANCE FUNDING.—

8 (1) APPROPRIATION.—In addition to amounts  
9 otherwise available, there is appropriated to the Sec-  
10 retary, out of amounts in the Treasury not otherwise  
11 appropriated, \$500,000,000 for the fiscal year end-  
12 ing September 30, 2021, to remain available until  
13 expended, for the operation and maintenance of  
14 water facilities serving Native communities.

15 (2) PRIORITY FOR FUNDING.—In awarding  
16 funding for the operation and maintenance of water  
17 facilities under paragraph (1), the Secretary shall  
18 prioritize water facilities the most in need of assist-  
19 ance, as identified by the Operation and Mainte-  
20 nance Capability Ratings of the Indian Health Serv-  
21 ice.

22 (3) FUTURE FUNDING.—On completion of an  
23 operation and maintenance of water facilities project  
24 described in paragraph (1), the Secretary shall, for  
25 not less than 5 years after the date on which the

1       project is completed and to the extent to which an-  
2       nual appropriations are available, include the com-  
3       pleted project as eligible for sustained funding sup-  
4       port and guidance to ensure that the investments in  
5       the water facilities are adequately maintained and  
6       operated for the health and welfare of Native com-  
7       munities served, ensuring that the infrastructure in-  
8       vestment is protected and the intended economic  
9       benefit is realized.

10 **SEC. 5. DEPARTMENT OF AGRICULTURE RURAL DEVELOP-  
11                   MENT.**

12       (a) APPROPRIATION.—In addition to amounts other-  
13       wise available, there is appropriated to the Secretary of  
14       Agriculture (referred to in this section as the “Sec-  
15       retary”), out of amounts in the Treasury not otherwise  
16       appropriated, \$500,000,000 to make grants under sec-  
17       tions 306C and 306D of the Consolidated Farm and Rural  
18       Development Act (7 U.S.C. 1926c, 1926d) to eligible enti-  
19       ties described in subsection (b) to provide for the develop-  
20       ment, use, and control of water (including the extension  
21       or improvement of existing water supply systems) in eligi-  
22       ble entities the residents of which face significant health  
23       risks, as determined by the Secretary, due to a significant  
24       proportion of the residents of the eligible entity not having

1 access to, or not being served by, an adequate affordable  
2 water supply system.

3 (b) ELIGIBLE ENTITIES.—An entity eligible to re-  
4 ceive a grant using amounts appropriated by subsection  
5 (a)—

6 (1) is a Native community; and  
7 (2) in the case of a grant under section 306D  
8 of the Consolidated Farm and Rural Development  
9 Act (7 U.S.C. 1926d), includes a consortium formed  
10 pursuant to section 325 of Public Law 105–83 (111  
11 Stat. 1597).

12 (c) NO MATCHING CONTRIBUTION.—An eligible enti-  
13 ty shall not be required to provide any matching contribu-  
14 tion otherwise required by any other provision of law (in-  
15 cluding regulations) with respect to a grant received by  
16 the eligible entity from amounts appropriated by sub-  
17 section (a).

18 (d) PRIORITY FOR FUNDING.—In awarding grants to  
19 eligible entities using amounts appropriated by subsection  
20 (a), the Secretary shall—

21 (1) treat members of an eligible entity in the  
22 same manner as individuals who reside in a colonia  
23 for purposes of subsections (a)(2)(B) and (c)(2) of  
24 section 306C of the Consolidated Farm and Rural  
25 Development Act (7 U.S.C. 1926c); and

1                         (2) award the grants without requiring an eligible  
2                         entity or the members of an eligible entity to  
3                         demonstrate an inability to finance the proposed  
4                         project—

5                             (A) from the resources of the eligible entity  
6                         or members; or

7                             (B) through commercial credit.

8                         (e) INTERAGENCY COLLABORATION.—The Secretary  
9                         shall consult with the Director of the Indian Health Serv-  
10                         ice regarding agency collaboration, project prioritization,  
11                         and staffing needs to ensure the amounts made available  
12                         under this section are used in the most effective manner  
13                         to promote access to water and sanitation.

14                         **SEC. 6. BUREAU OF RECLAMATION.**

15                         (a) RURAL WATER SUPPLY PROGRAM REAUTHOR-  
16                         IZATION.—

17                             (1) AUTHORIZATION OF APPROPRIATIONS.—  
18                         Section 109(a) of the Rural Water Supply Act of  
19                         2006 (43 U.S.C. 2408(a)) is amended by striking  
20                         “2016” and inserting “2031”.

21                             (2) TERMINATION OF AUTHORITY.—Section  
22                         110 of the Rural Water Supply Act of 2006 (43  
23                         U.S.C. 2409) is amended by striking “2016” and in-  
24                         serting “2031”.

1       (b) BUREAU OF RECLAMATION RURAL WATER SUP-  
2       PLY PROGRAM.—

3               (1) DEFINITIONS.—In this subsection:  
4                       (A) RECLAMATION STATE.—The term  
5                       “Reclamation State” means a State described  
6                       in the first section of the Act of June 17, 1902  
7                       (43 U.S.C. 391; 32 Stat. 388, chapter 1093).

8                       (B) SECRETARY.—The term “Secretary”  
9                       means the Secretary of the Interior, acting  
10                      through the Commissioner of Reclamation.

11               (2) COMPETITIVE GRANT PROGRAM FOR TRIBAL  
12                      CLEAN WATER ACCESS PROJECTS.—

13                       (A) ESTABLISHMENT.—In accordance with  
14                       section 103 of the Rural Water Supply Act of  
15                       2006 (43 U.S.C. 2402), the Secretary shall es-  
16                      tablish a competitive grant program under  
17                      which an Indian Tribe shall be eligible to apply  
18                      for a grant from the Secretary in an amount  
19                      not to exceed 100 percent of the cost of plan-  
20                      ning, design, and construction of a project de-  
21                      termined by the Secretary to be eligible for  
22                      funding under subparagraph (B).

23                       (B) ELIGIBILITY.—To be eligible for a  
24                      grant under subparagraph (A), a project shall,  
25                      as determined by the Secretary—

1                             (i)(I) provide, increase, or enhance ac-  
2                             cess to safe drinking water for commu-  
3                             nities and households on Tribal land; or

4                             (ii) address public health and safety  
5                             concerns associated with access to safe  
6                             drinking water; and

7                             (ii) be carried out in a Reclamation  
8                             State.

9                             (C) PRIORITY.—

10                             (i) IN GENERAL.—In providing grants  
11                             under subparagraph (A), the Secretary  
12                             shall give priority to projects that meet 1  
13                             or more of the following criteria:

14                             (I) A project that would provide  
15                             potable water supplies to communities  
16                             or households on Tribal land that do  
17                             not have access to running water as of  
18                             the date of the project application.

19                             (II) A project that would address  
20                             an urgent and compelling public  
21                             health or safety concern relating to  
22                             access to safe drinking water for resi-  
23                             dents on Tribal land.

24                             (III) A project that would ad-  
25                             dress needs identified in the Report.

(IV) A project that is closer to being completed, or farther along in planning, design, or construction, as compared to other projects being considered for funding.

(V) A project that would take advantage of the experience and technical expertise of the Bureau of Reclamation in the planning, design, and construction of rural water projects, particularly with respect to a project that takes advantage of economies of scale.

(VI) A project that would take advantage of local or regional partnerships that complement related efforts by Tribal, State, or Federal agencies to enhance access to drinking water or water sanitation services on Tribal land.

(VII) A project that would leverage the resources or capabilities of other Tribal, State, or Federal agencies to accelerate planning, design, and construction.

(VIII) A project that would provide multiple benefits, including—

- (aa) improved water supply reliability;
- (bb) public health improvements;
- (cc) ecosystem benefits;
- (dd) groundwater management and enhancements; and
- (ee) water quality improvements.

### 7 (3) FUNDING.—

16 (i) may use up to 2 percent for—

(c) FUNDING FOR NATIVE AMERICAN AFFAIRS  
TECHNICAL ASSISTANCE PROGRAM OF THE BUREAU OF RECLAMATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of the Interior, out of amounts in the Treasury not otherwise appropriated, \$90,000,000 for use, in accordance with section 201 of the Energy and Water Development Appropriations Act, 2003 (43 U.S.C. 373d), for the Native American Affairs Technical Assistance Program of the Bureau of Reclamation for the fiscal year ending September 30, 2021, to remain available until expended.

1   **SEC. 7. DRINKING WATER AND CLEAN WATER STATE RE-**  
2                   **VOLVING FUNDS.**

3         (a) APPROPRIATION.—Notwithstanding any amounts  
4 reserved under section 518(c) of the Federal Water Pollu-  
5 tion Control Act (33 U.S.C. 1377(c)) or section 1452(i)(1)  
6 of the Safe Drinking Water Act (42 U.S.C. 300j–12(i)(1))  
7 and in addition to amounts otherwise made available,  
8 there is appropriated to the Administrator of the Environ-  
9 mental Protection Agency (referred to in this section as  
10 the “Administrator”) for the fiscal year ending September  
11 30, 2021, out of any amounts in the Treasury not other-  
12 wise appropriated, to remain available until expended—

13                 (1) \$100,000,000 for the purposes described in  
14 section 518(c)(3) of the Federal Water Pollution  
15 Control Act (33 U.S.C. 1377(c)(3)); and

16                 (2) \$100,000,000 for the purposes described in  
17 section 1452(i) of the Safe Drinking Water Act (42  
18 U.S.C. 300j–12(i)).

19         (b) USE OF FUNDS.—

20                 (1) TECHNICAL ASSISTANCE.—Of the amounts  
21 made available under subsection (a), the Adminis-  
22 trator may use \$5,000,000 to provide training, tech-  
23 nical assistance, and educational programs to Native  
24 communities with respect to the operation and main-  
25 tenance of treatment works (as defined in section  
26 212 of the Federal Water Pollution Control Act (33

1       U.S.C. 1292)) and public water systems (as defined  
2       in section 1401 of the Safe Drinking Water Act (42  
3       U.S.C. 300f)).

4                     (2) MANAGEMENT AND OVERSIGHT COSTS.—Of  
5       the amounts made available under subsection (a),  
6       the Administrator may use 2 percent for the man-  
7       agement and oversight of Native community projects  
8       carried out using funds made available under that  
9       subsection.

10          (c) REQUIREMENTS.—

11                     (1) OUTREACH.—The Administrator shall in-  
12       crease efforts to promote Native community access  
13       to drinking water and wastewater services to ensure  
14       the most effective use of amounts made available  
15       under subsection (a), including by—

16                         (A) increasing direct communication with  
17       Native communities to better assess the needs  
18       of those Native communities;

19                         (B) providing clear information to Native  
20       communities with respect to funding avail-  
21       ability; and

22                         (C) providing an option to receive funding  
23       under this section through a direct grant using  
24       the amounts made available under subsection

1                         (a) or through an interagency agreement with  
2                         the Indian Health Service.

3                         (2) INTERAGENCY COLLABORATION.—In car-  
4                         rying out this section, the Administrator shall con-  
5                         sult with the Director regarding agency collabora-  
6                         tion, project prioritization, and staffing needs to en-  
7                         sure that amounts made available under subsection  
8                         (a) are used in the most effective manner to promote  
9                         Native community access to drinking water and  
10                         wastewater services.

11                         (d) TRANSFER OF FUNDS.—Nothing in this section  
12                         affects the authority of the Administrator to transfer  
13                         funds made available under subsection (a) among the ac-  
14                         counts for—

15                         (1) the program established under section 518  
16                         of the Federal Water Pollution Control Act (33  
17                         U.S.C. 1377); and

18                         (2) the program established under section  
19                         1452(i) of the Safe Drinking Water Act (42 U.S.C.  
20                         300j–12(i)).

